

REMARKS

In the Final Office Action¹ of September 6, 2006, the Examiner rejected claims 1-13, 15-29, and 31-41 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,605,081 to Helmly, Jr. et al. (*Helmly*). Applicant thanks Examiner Fisher for the courtesy extended during the December 20, 2006 interview. Consistent with the issues discussed during the interview, Applicant submits the following remarks.

Applicant respectfully traverses the 35 U.S.C. § 103(a) rejection of claims 1-13, 15-29, and 31-41 for at least the reason that *Helmly* fails to disclose or suggest every claimed element. For example, *Helmly* does not disclose or suggest a combination of steps including, *inter alia*, "calculating a modified target payload weight based on an analysis of previous payload weight" (emphasis added) as recited in independent claim 1.

As admitted by the Examiner, *Helmly* fails to disclose at least this step of the claimed method (Final Office action at p. 2). *Helmly* discloses a process "to automatically measure the gross weight, load, and length of trucks, such as at refineries, truck terminals, and depots" (Abstract). As part of its method, *Helmly* "compares the maximum allowable loaded weight with the actual scale weight and automatically actuates a printer to print a bill of lading for the truck, if the actual scale weight is less than the maximum legal weight" (column 2, lines 8-12). *Helmly* includes a "digital readout for displaying the measured weight and/or load of the truck and/or number of pounds that the truck is above or below the legal limit" (column 2, lines 16-

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

20). Thus, while *Helmlly* measures equipment weight, and indicates whether it complies with a “legal limit,” it does not calculate a modified target payload weight based on an analysis of previous payload weight, as recited in claim 1.

According to the Examiner, “[i]t would have been obvious to use the data for analyzing and modifying the payloads as *Helmlly* teaches the system as being used to comply with government regulations and if a load is above legal limits the company would be in danger of legal action taken against it” (Final Office action at pp. 2-3). However, *Helmlly* only teaches a “legal limit” for a piece of equipment. For example, in *Helmlly*, “a legal weight determining module 160 compares the truck’s length, number of axles, and outside tires with preloaded data records and/or table based upon the Department of Transportation regulations and determines and selects the appropriate maximum allowable weight (legal limit) from the data table (column 7, line 66 to column 8, line 4).

Therefore, contrary to the Examiner’s assertion, because the “legal limit” in *Helmlly* is already determined, *Helmlly* does not calculate a “modified target payload,” as recited in claim 1 (emphasis added). In fact, *Helmlly* teaches away from calculating a “modified target payload” because it merely discloses determining whether equipment complies with a “legal limit,” which is predetermined by comparing “the truck’s length, number of axles, and outside tires” with the “records and/or tables based upon the Department of Transportation regulations.” There is no teaching or suggestion in *Helmlly* to calculate a modified “legal limit.”

For at least this reason, the rejection of claim 1 under 35 U.S.C. § 103(a) is not supportable and should be withdrawn. In addition, claims 2-13 and 15-16, which

ultimately depend from independent claim 1, are allowable for at least the same reasons as cited above. Further, each of these dependent claims may recite unique combinations that are neither taught nor suggested by the prior art. Independent claims 17, 33, 40, and 41 although of different scope, recite similar features. Therefore, these claims are also allowable for at least the same reasons as cited above. Dependent claims 18-29, 31-32, and 34-37 depend from one of these independent claims and are allowable for at least the same reasons.

Regarding independent claim 38, the Examiner stated that "it would have been obvious to one of ordinary skill in the art to obtain payload compliance data to check for compliance as overloading a vehicle could void warranty" (Final Office action at p. 5). Claim 38 recites, *inter alia*, a "method for reviewing a request for warranty service on a piece of equipment subject to a payload standard." *Helmly* fails to disclose this method.

Helmly discloses a process to "measure the load and length of trucks, such as at refineries, truck terminals, and depots, to assure compliance with state highway laws and regulations" (column 1, lines 55-59). Therefore, nothing in *Helmly* teaches or suggests a method for reviewing a request for warranty service on a piece of equipment subject to a payload standard. Accordingly, for at least these reasons, Applicant respectfully requests that the Examiner withdraw the rejection of claim 38 under 35 U.S.C. § 103(a). Claim 39 depends from independent claim 38 and is therefore allowable for at least the same reasons.

As discussed in the personal interview with the Examiner on December 20, 2006, the Office action does not address all of Applicant's pending claims. For example, claim 15 was not addressed in the final Office Action. This fact was confirmed in the

interview, as provided in the Interview Summary "[t]he examiner agreed that a further rejection is warranted as claim 15 was not specifically rejected in the previous action." For this additional reason, Applicant respectfully submits that the Final Office action is legally deficient and should be withdrawn.


In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 
Roland G. McAndrews
Reg. No. 41,450